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TITLE 81

CHAPTER 23,

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CHAPTER 15

Section 121, 124, 1801, 1802

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CHAPTER 23

MILK PRICE CONTROL

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PART 1

GENERAL ADMINISTRATION

81-23-101. DEFINITIONS. (1) Unless the context requires otherwise, in this Chapter the following definitions apply:

(a) "BOARD" means the board of milk control provided for in 2-15-1802.

(b) "CLASS I MILK" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "CLASS II MILK" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "CLASS III MILK" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "CONSUMER" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "DEALER" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "DEPARTMENT" means the department of business regulation provided for in Title 2, Chapter 15, part 18.

(h) "DISTRIBUTOR" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

(i) "JOBBER PRICES" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(j) "LICENSEE" means a person who holds a license from the department.

(k) "MARKET" means an area of the state designated by the department as a natural marketing area.

(l) "MILK" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(m) "PERSON" means a person, firm, corporation, or cooperative association.

(n) "PRODUCER" means a person who produces milk for consumption in this state, selling it to a distributor.

(o) "PRODUCER-DISTRIBUTOR" means a person both producing and distributing milk for consumption in this state.

(p) "PRODUCER PRICES" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(q) "RETAIL PRICES" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption in the premises.

(r) "RETAILER" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(s) "WHOLESALE PRICES" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its descretion it determines to be proper.

HISTORY: En. Sec. 3, Ch. 204, L. 1939; amd. Sec. 1, Ch. 192, L. 1959; amd. Sec. 3, Ch. 4, L. 1967; amd. Sec. 1, Ch. 107, L. 1971; amd. Sec. 89, Ch. 431, L. 1975; R.C.M. 1947, 27-403.

81-23-102. POLICY. (1) It is hereby declared that:

(a) milk is a necessary article of food for human consumption;

(b) the production and maintenance of an adequate supply of healthful milk of proper chemical and physical content, free from contamination, is vital to the public health and welfare;

(c) the production, transportation, processing, storage, distribution, and sale of milk in the state of Montana is an industry affecting the public health and interest;

(d) unfair, unjust, destructive, and demoralizing trade practices have been and are now being carried on in the production, transportation, processing, storage, distribution, and sale of milk and products manufactured therefrom, which trade practices constitute a constant menace to the health and welfare of the inhabitants of this state and tend to undermine the sanitary regulations and standards of content and purity of milk;

(e) health regulations alone are insufficient to prevent disturbances in the milk industry and to safeguard the consuming public from further inadequacy of a supply of this necessary commodity;

(f) it is the policy of this state to promote, foster, and encourage the intelligent production and orderly marketing of milk and cream and products manufactured therefrom, to eliminate speculation and waste, to make the distribution thereof between the producer and consumer as direct as can be efficiently and economically done, and to stabilize the marketing of such commodities;

(g) investigations have revealed and experience has shown that, due to the nature of milk and the conditions surrounding the production and marketing of milk and due to the vital importance of milk to the health and well-being of the citizens of this state, it is necessary to invoke the police powers of the state to provide a constant supervision and regulation of the milk industry of the state to prevent the occurrence and recurrence of those unfair, unjust, destructive, demoralizing, and chaotic conditions and trade practices within the industry which have in the past affected the industry and which constantly threaten to be revived within the industry and to disrupt or destroy an adequate supply of pure and wholesome milk to the consuming public and to the citizens of this state;

(h) milk is a perishable commodity which is easily contaiminated with harmful bacteria, which cannot be stored for any great length of time, which must be produced and distributed fresh daily, and the supply of which cannot be regulated from day to day but, due to natural and seasonal conditions, must be produced on a constantly uniform and even basis;

(i) the demand for this perishable commodity fluctuates from day to day and from time to time making it necessary that the producers and distributors shall produce and carry on hand a surplus of milk in order to guarantee and insure to the consuming public an adequate supply at all times, which surplus must of necessity be converted into byproducts of milk at great expense and ofttimes at a loss to the producer and distributor;

(j) this surplus of milk, though necessary and unavoidable, unless regulated, tends to undermine and destroy the milk industry, which causes producers to relax their diligence in complying with the provisions of the health authorities and ofttimes to produce milk of an inferior and unsanitary quality;

(k) investigation and experience have further shown that, due to the nature of milk and the conditions surrounding its production and marketing, unless the producers, distributors, and others engaged in the marketing of milk are guaranteed and insured a reasonable profit on milk, both the supply and quality of milk are affected to the detriment of and against the best interest of the citizens of this state whose health and well-being are thereby vitally affected;

(l) where no supervision and regulation are provided for the orderly and profitable marketing of milk, past experience has shown that the credit status of both producers and distributors of milk is adversely affected to a serious degree, thereby entailing loss and hardship upon all within the community with whom these producers and distributors carry on business relations;

(m) due to the nature of milk and the conditions surrounding its production and distribution, the natural law of supply and demand has been found inadequate to protect the industry in this and other states and in the public interest it is necessary to provide state supervision and regulation of the milk industry in this state.

(2) The general purpose of this chapter is to protect and promote public welfare and to eliminate unfair and demoralizing trade practices in the milk industry. It is enacted in the exercise of the police powers of the state.

HISTORY: (1)En. Sec. 1, Ch. 204, L. 1939; amd. Sec. 1, Ch. 4, L. 1967; Sec. 27-401, R.C.M. 1947; (2)En. Sec. 2, Ch. 204, L. 1939; amd. Sec. 2, Ch. 4, L. 1967; amd. Sec. 88, Ch. 431, L. 1975; Sec. 27-402, R.C.M. 1947; R.C.M. 1947, 27-401, 27-402.

81-23-103. GENERAL POWERS OF THE DEPARTMENT. (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk sold for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws or the law under which the department of livestock is constituted together with the department of livestock rules, county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may cooperate with the department of health and environmental sciences, the board of livestock, any county or

city board of health, or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness.

HISTORY: En.Sec. 5, Ch. 204, L. 1939; amd. Sec. 3, Ch. 192, L. 1959; amd. Sec. 4, Ch. 4, L. 1967; amd. Sec. 1, Ch. 267, L. 1975; amd. Sec. 90, Ch. 431, L. 1975; amd. Sec. 1, Ch. 19, L. 1977; R.C.M. 1947, 27-405.

81-23-104. RULES AND ORDERS. The department may adopt and enforce rules and orders necessary to carry out the provisions of this chapter and any orders adopted under it by the department or the board. A rule or order shall be posted for public inspection in the main office of the department for 30 days, and a copy shall be filed in the office of the department. A copy shall also be sent by registered or certified letter to the secretary of each area, except in the case of an order directed only to a person or persons named in it, which shall be served by personal delivery of a copy or by mailing a copy to each person to whom the order is directed or, in the case of a corporation, to any officer or agent of the corporation upon whom a summons may be served in accordance with laws of this state. The posting, in the main office of the department, of a rule or order not required to be personally served as provided in this section and the filing in the office of the department is sufficient notice to all persons affected by the rule or order. A rule or order when properly posted and filed or served, as provided in this section, has the force of law.

HISTORY: En. Sec. 13, Ch. 204, L. 1939; amd. Sec. 97, Ch. 431, L. 1975; R.C.M. 1947, 27-413.

81-23-105. TESTING OF MILK. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants which receive raw milk directly from producers, the department of business regulation shall establish a program of testing such raw milk.

(2) The department of business regulation may levy an assessment on licensed producers to secure the necessary funds to administer this program. The assessment is in addition to those provided in 81-23-202.

(3) All personnel employed in the sampling and testing program shall be licensed by the animal health division of the department

of livestock.

(4) The department of business regulation may conduct all types of sampling grading, and testing techniques which it considers necessary to carry out the intent of this section.

HISTORY: En. 27-430 by Sec. 1, Ch. 245, L. 1977; R.C.M. 1947, 27-430.

81-23-106. APPLICATION. This chapter does not apply to foreign or interstate commerce except insofar as it may be effective in compliance with the United States constitution and with the laws of the United States. It is the intention of the legislature, however, that the instant, whenever that may be, that the handling within the state by a dealer of milk produced outside of the state becomes the subject of regulation by the state in the exercise of its police powers, the provisions of this chapter affecting intrastate milk immediately apply and the powers conferred by this chapter attach thereto.

HISTORY: En. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; R.C.M. 1947, 27-423(2).

PART 2

LICENSING

81-23-201. LICENSES TO PRODUCERS, PRODUCER-DISTRIBUTORS, DISTRIBUTORS, AND JOBBERS. In any market where the provisions of this chapter apply, it is unlawful for a producer, producer-distributor, distributor, or jobber to produce, transport, process, store, handle, distribute, buy, or sell milk unless the dealer is properly licensed as provided by this chapter. It is unlawful for a person to buy, sell, handle, process, or distribute milk which he knows or has reason to believe has been previously dealt with or handled in violation of any provision of this chapter. The department may decline to grant a license or may suspend or revoke a license already granted, upon due cause and after hearings.

HISTORY: En. Sec. 8, Ch. 204, L. 1939; amd. Sec. 4, Ch. 107, L. 1971; amd. Sec. 93, Ch. 431, L. 1975; R.C.M. 1947, 27-408.

81-23-202. LICENSES -- DISPOSITION OF INCOME. (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department of livestock, or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter

by the department. The annual fee for the license from the department is $2 and is due before July 1 and shall be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter shall apply to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) The assessment upon producer-distributors, producers, and distributors shall be paid quarterly before Janaury 15, April 15, July 15, and October 15 of each year. The amount of the assessment shall be computed by applying the fee designated by the department to the volume of milk sold in the preceding calendar quarter.

(5) Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter and his license under this chapter automatically terminates and is void. A license so terminated shall be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment which was due.

(6) All assessments required by this chapter shall be deposited by the department in the earmarked revenue fund. All costs of administering this chapter including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this chapter, shall be paid out of control board moneys in that fund.

(7) The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year.

HISTORY: *Ap.p.Sec. 9, Ch. 204, L. 1939; amd. Sec. 6, Ch. 192, L. 1959; amd. Sec. 157, Ch. 147, L. 1963; amd. Sec. 5, Ch. 107, L. 1971; amd. Sec. 2, Ch. 127, L. 1974; amd. Sec. 94, Ch. 431, L. 1975; Sec. 27-409, R.C.M. 1947; Ap. p. Sec. 23, Ch. 204, L. 1939; amd. Sec. 106, Ch. 431, L. 1975; Sec. 27-423, R.C.M. 1947; R.C.M. 1947, 27-409, 27-423(part).*

81-23-203. APPLICATION FOR LICENSES. An applicant for license to operate as a producer, producer-distributor, distributor, or jobber shall file a signed application upon a blank prepared under authority of the department, and an applicant shall state facts concerning his circumstances and the nature of the business to be conducted which in the opinion of the department are necessary for the administration of this chapter. The application shall certify the applicant to be the holder of all licenses required by the department of livestock for the conduct of his business or, in the case of milk entering this state from another state or forign nation, compliance with the requirements of the Montana Food, Drug, and Cosmetic Act. The application shall be accompanies by the license fee required to be paid.

HISTORY: *En. Sec. 10, Ch. 204, L. 1939; amd. Sec. 7, Ch. 192, L. 1959; amd. Sec. 6, Ch. 107, L. 1971; amd. Sec. 95, Ch. 431, L. 1975; R.C.M. 1947, 27-410.*

81-23-204. DECLINING, SUSPENDING, AND REVOKING LICENSES -- PENALTIES IN LIEU OF SUSPENSION OR REVOCATION. (1) The department may refuse to grant a license or may suspend or revoke a license already granted for due cause upon due notice and after hearing. The violation of any provisions of this chapter or of any lawful order or rule of the board or department, the failure or refusal to make required statements or reports, or failure to pay license or assessment fees are causes for which the department may, atits discretion, suspend or revoke a license.

(2) In place of suspension or revocation of a license, the department may assess a civil penalty not to exceed $500 per day for each daily failure to comply with or each daily violation of the provisions of this chapter or of any lawful order or rule of the department or board. If the person against whom a civil penalty is assessed fails to pay the civil penalty immediately, the department shall collect the civil penalty by a civil proceeding in the district court of the first judicial district. This penalty shall be construed as civil and not criminal in nature. Any moneys received by the department as a result of collection of civil penalties

shall be paid into the earmarked revenue fund as provided by 81-23-403.

HISTORY: *En. Sec. 11, Ch. 204, L. 1939; amd. Sec. 7, Ch. 107, L. 1971; amd. Sec. 96, Ch. 431, L. 1975; R.C.M. 1947, 27-411.*

81-23-205. BONDS REQUIRED OF DISTRIBUTORS -- AMOUNTS -- FORMS AND CONDITIONS. (1) A distributor before purchasing milk from a producer shall deliver to the department a surety bond of not less than $1,000, executed by the distributor as principal and by a surety company authorized to do business in this state as surety. The bond shall be on a form approved by the department and shall be conditioned upon the payment, in the manner required by this chapter, of all amounts due to producers for milk purchased by the distributor during the license year. The bond shall be to the state in favor of every producer of milk. In case of failure by a distributor to pay a producer for milk in the manner required by this chapter, the department shall proceed immediately to ascertain the names and addresses of all producer-creditors of that distributor, together with the amounts due them and shall request all those producer-creditors to file a verified statement of their respective claims. The department shall then sue on the bond on behalf of the producer-creditors. Upon suing on the bond, the department may require the filing of a new bond; and immediately upon a recovery in an action upon the bond, the distributor shall file a new bond. Upon failure to file a new bond within 10 days in either case, the failure is grounds for the revocation or suspension of the license of the distributor. If recovery on the bond is not sufficient to pay all of the claims as finally determined by the court, the amount recovered shall be divided pro rata among the producer-creditors.

(2) The minimum bond of $1,000 shall be required of distributors purchasing an average daily quantity of milk of less than 100 gallons; distributors purchasing an average daily quantity of 100 gallons and less than 200 gallons during any calendar month during a license year shall post a bond in the amount of $2,000; distributors purchasing an average daily quantity of 200 gallons and less than 300 gallons during any calendar month during a license year shall post a bond in the amount of $3,000; distributors purchasing an average daily quantity of 300 gallons or more during any calendar month during a license year shall post a bond in the sum of $5,000.

(3) If a distributor increases his purchases of milk during the license year to exceed the amount for which he is bonded, he shall immediately post the additional bond required to comply with this section.

(4) The department may require a distributor to furnish a bond in addition to those specified in this section if, after notice and hearing and upon good cause shown, it determines the additional bond is required to assure payment of all amounts due or to become due to producers.

(5) Failure of a distributor who purchases milk from producers to post a bond required by this section is a violation of this chapter.

HISTORY: En. Sec. 10, Ch. 192, L. 1959; amd. Sec. 7, Ch. 4, L. 1967; amd. Sec. 108, Ch. 431, L. 1975; R.C.M. 1947, 27-426.

PART 3

REGULATION OF MILK PRICES

81-23-301. MARKETS. (1) Pursuant to the declaration of policy relating to milk set forth in 81-23-102(1), the department shall designate natural marketing areas which shall together embrace all the geographical area of the state and shall enforce minimum producer, wholesale, and retail prices established for those areas by the board.

(2) Natural marketing areas shall be established throughout the state by the department. Before a proposed natural marketing area is established, the department, after notice of at least 30 days, shall hold a hearing or hearings, at a place or places within the proposed area, at which producers and distributors doing business within the proposed natrual marketing area, who are licensed by the department of livestock, and the consuming public may present evidence and testify. If the hearing or hearings make it evident to the department that the establishment of the proposed natural marketing area is in the public interest, the department shall establish the natural marketing area.

(3) The department may from time to time adjust the boundaries of natural marketing areas, if after a hearing upon notice of at least 30 days to all interested parties it finds the adjustment to be in the public interest.

HISTORY: En. Sec. 6, Ch. 204, L. 1939; amd. Sec. 4, Ch. 192, L. 1959; amd. Sec. 2, Ch. 107, L. 1971; amd. Sec. 91, Ch. 431, L. 1975; R.C.M. 1947, 27-406.

81-23-302. ESTABLISHMENT OF MINIMUM PRICES. (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for Class I milk and minimum producer prices only for Class II and Class III milk in all areas of the state by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified

on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distriburion, and prices in adjacent and neighboring areas and states so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include but shall not be limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) the ability and willingness of consumers to purchase, which shall include among other things per capita disposable income statistics, consumer price indexes and wholesale price indexes;

(c) the cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States department of agriculture), prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

(d) the alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things prices received by farmers for all products other than milk, prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) the prices of butter, nonfat dry milk, and cheese;

(f) the cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) the cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost, and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) a reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall when publishing notice of proposed rulemaking under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula whereby minimum:

(a) producer prices for milk in classes I, II, and III shall be computed;

(b) wholesale prices for milk in class I shall be computed;

(c) jobber prices for milk in class I shall be computed;

(d) retail prices for milk in Class I shall be computed;

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective

set forth in subsection (7). If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) The board shall adopt rules after notice and hearing in the manner perscribed by the Montana Administrative Procedure Act to regulate transportation rates which distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. No allowance for transportation of milk between plants may be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas. The board may in its discretion, when it determines the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor, or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an areawide or statewide pooling arrangement as a method of payment of producer prices, provided

that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or statewide, as the case may be. If the board finds that the evidence adduced at such hearing warrants the establishment of such an areawide or statewide pooling arrangement, the board shall proceed by official order to establish the same; but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or areawide or statewide pooling arrangements or abandonment thereof.

(17) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control division of the department of business regulation.

HISTORY: En. Sec. 7, Ch. 204, L. 1939; amd. Sec. 5, Ch. 192, L. 1959; amd. Sec. 5, Ch. 4, L. 1967; amd. Sec. 3, Ch. 107, L. 1971; amd. Sec. 1, Ch. 127, L. 1974, amd. Sec. 92, Ch. 431, L. 1975; amd. Sec. 2, Ch. 19, L. 1977; R.C.M. 1947, 27-407.

81-23-303. RULES OF FAIR TRADE PRACTICES. The department may adopt reasonable rules governing fair trade practices as they pertain to the transaction of business among licensees under this chapter and among licensees and the general public. Those rules shall contain but are not limited to provisions prohibiting the following methods of doing business which are unfair, unlawful, and not in the public interest:

(1) the payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by a person, whether in the form of money or otherwise;

(2) the giving of milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of a customer;

(3) the extension to certain customers of special prices or services not available to all customers who purcahse milk of like quantity under like terms and conditions;

(4) the pruchasing, processing, bottling, packaging, transporting, delivering or otherwise handling in any marketing area of milk which is to be or is sold or otherwise disposed of at less than the minimum wholesale and minimum retail prices established by the board;

(5) the payment of a price lower than the applicable producer price, established by the board, by a distributor to a producer for milk which is distributed to any person, including agencies of the federal, state, or local government.

HISTORY: En. Sec. 14, Ch. 204, L. 1939; amd. Sec. 8, Ch. 192, L. 1959; amd. Sec. 98, Ch. 431, L. 1975; R.C.M. 1947, 27-414.

81-23-304. LIMITATION ON EXTENSION OF CREDIT TO RETAILERS. A sale or delivery may not be made by a producer-distributor, distributor, or jobber to a retailer, except for cash or payment within 15 days after regular billings, and all producer-distributors, distributors, and jobbers shall bill retailers at least monthly. A producer-distributor, distributor, or jobber may not extend more than 15 days' credit after billing to a retailer. A retailer may not receive delivery of milk without agreement to pay for it in cash within 15 days after regular billings. A correctly dated check which is honored upon presentment is cash within the meaning of this section. An extension or acceptance of credit in violation of this section shall be construed as rendering or receiving financial assistance. The licenses of producer-distributors, distributors, or jobbers involved in violation of this section shall be suspended or revoked as determined by the department in its discretion.

HISTORY: En. Sec. 8, Ch, 107, L. 1971; amd. Sec. 99, Ch. 431, L. 1975; R.C.M. 1947, 27-414.1.

81-23-305. FINANCING PROHIBITIONS -- PRODUCER AND RETAILER. (1) A producer, producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a retailer. A producer, producer-distributor, distributor, or jobber may not be financially interested either directly or indirectly, in the conduct or operation of the business of a retailer. A producer-distributor, distributor, or jobber licensed under this chapter may not advance or loan money or credit to or furnish money or credit for or refinance or cosign or guarantee promissory notes, security agreements, conditional sales contracts, or other commercial paper for or on behalf of a producer. A producer-distributor, distributor or jobber may not be financially interested, either directly or indirectly, in the conduct or operation of the business

of a producer. This section does not prohibit a producer from belonging to, participating in, or patronizing a cooperative corporation or a producer, producer-distributor, distributor, or jobber from operating his own wholly-owned dairy products or other retail store or home-delivery retail routes.

(2) This section does not prohibit a producer from requesting and a distributor from granting an advance payment for milk before the regular date of payment for milk or limit in any way the right of a producer to assign part or all of moneys which are or may become due to him from a distributor.

HISTORY: En. Sec. 9, Ch. 107, L. 1971; amd. Sec. 100, Ch. 431, L. 1975; R.C.M. 1947, 27-414.2.

PART 4

ENFORCEMENT

81-23-401. ENTRY, INSPECTION, AND INVESTIGATION. The department may enter, at all reasonable hours, all places where milk is produced, processed, bottled, handled, or stored or where the books, papers, records, or documents relative to those transactions are kept, and may inspect and copy them in any place in this state. The department may administer oaths and take testimony for the purpose of ascertaining facts which, in the judgment of the department, are necessary to administer this chapter.

HISTORY: En. Sec. 15, Ch. 204, L. 1939; amd. Sec. 6, Ch. 4, L. 2967; amd. Sec. 101, Ch. 431, L. 1975; R.C.M. 1947, 27-415.

81-23-402. REPORTS OF DEALERS --ACCOUNTING SYSTEM -- RECORDS. (1) The department may require licensees to file with it reports at reasonable or regular times which the department may require, showing the licensee's production, sale, or distribution of milk and any information considered by the department necessary which pertains to the production, sale, or distribution of milk, either under oath or otherwise, as the department may direct. Failure or refusal to file a report when directed to do so is grounds for the revocation of the license and is a violation for which the licensee may be fined as provided by this chapter, one or both, at the discretion of the department.

(2) The department shall adopt a uniform system of accounting to be used by the distributor to account for the usage of all milk received by the distributor.

(3) A distributor and producer-distributor shall keep:

(a) a record of all milk, cream, or dairy products received, detailed as to location, names and addresses of suppliers, prices paid, deductions or charges made, and the use to which the milk or cream was put;

(b) a record of the quantity of each kind of milk or dairy product manufactured and the quantity and price of milk or dairy products sold;

(c) a complete record of all milk, cream, or dairy products sold, classified as to kind and grade, showing where sold, and the amount received in payment;

(d) a record of the wastage or loss of milk or dairy products;

(e) a record of the items of handling expense;

(f) a record of all refrigeration facilities sold for storage purposes to any person, showing types, sizes, and location of the facilities and the original or duplicate original of all agreements covering sales for them;

(g) other records which the department considers necessary for the proper enforcement of this chapter.

HISTORY: En. Sec. 16, Ch. 204, L. 1939; amd. Sec. 9, Ch. 192, L. 1959; amd. Sec. 102, Ch. 431, L. 1975; R.C.M. 1947, 27-416.

81-23-403. DISPOSITION OF FINES. (1) All fines assessed by a court for violation of this chapter shall be paid by the court to the department.

(2) All fines received by the department shall be deposited with the state treasurer and shall be placed by him in the earmarked revenue fund. Fines assessed for violations of this chapter are earmarked for the purposes of this chapter.

HISTORY: En. Sec. 17, Ch. 204, L. 1939; amd. Sec. 158, Ch. 147, L. 1963; amd. Sec. 103, Ch. 431, L. 1975; R.C.M. 1947, 27-417.

81-23-404. COOPERATION WITH OTHER GOVERNMENTAL AGENCIES. In order to secure a uniform system of milk control, the department shall confer and cooperate with the proper authorities of other states and of the United States, including the secretary of agriculture of the United States, and for those purposes, the department may conduct joint hearings, issue joint or concurrent orders, and exercise all its powers under this chapter.

HISTORY: En. Sec. 21, Ch. 204, L. 1939; amd. Sec. 104, Ch. 431, L. 1975; R.C.M. 1947, 27-421.

81-23-405. VIOLATIONS MADE MISDEMEANORS -- PENALTIES. (1) A person who produces, sells, distributes, or handles milk in any way, except as a consumer, without a license from the department as required by this chapter or who violates a lawful rule of the department or board is guilty of a misdemeanor punishable by a fine not exceeding $600. Each day's violation is a separate offense.

(2) The district courts have original jurisdiction in all criminal actions for violations of this chapter and in all civil actions for the recovery or enforcement of penalties provided for in this chapter. All of those actions, both criminal and civil shall be tried in the district court.

(3) The county attorneys, in their respective counties, shall diligently prosecute all violations of this chapter.

HISTORY: En. Sec. 22, Ch. 204, L. 1939; amd. Sec. 105, Ch. 431, L. 1975; R.C.M. 1947, 27-422.

81-23-406. ADDITIONAL REMEDIES. The department may begin any proceeding at law or in equity as may appear necessary to enforce compliance with this chapter or to enforce compliance with an order or rule of the board or department adopted under this chapter or to obtain a judicial interpretation of any of them. In addition to any other remedy, the department may apply to the district court of the district where the action arises for relief by injunction, mandamus, or any other appropriate remedy in equity without being compelled to allege or prove that an adequate remedy at law does not otherwide exist. The department may not be required to post bond in an action to which it is a party whether upon appeal or otherwise. All legal actions may be brought by or against the board or department in the name of the department of business regulation, and it is not necessary in an action to which the department is a party that the action be brought by or against this state on relation of the department. The department may sue by its own attorney, and it may also call upon a county attorney to represent it in the district court of his county or the attorney general to represent it on appeal to the supreme court, or it may associate its own attorney with either in any court.

HISTORY: En. Sec. 24, Ch. 204, L. 1939; amd. Sec. 107, Ch. 431, L. 1975; R.C.M. 1947, 27-424.

PART 18

DEPARTMENT OF BUSINESS REGULATION

2-15-1801. DEPARTMENT OF BUSINESS REGULATION -- HEAD. There is a department of business regulation. The department head is a director of business regulation appointed by the governor in accordance with 2-15-111.

HISTORY: En. 82A-401 by Sec. 1, Ch. 272. L. 1971; amd. Sec. 141, Ch. 431, L. 1975; R.C.M. 1947, 82A-401.

2-15-1802. BOARD OF MILK CONTROL -- MEMBERSHIP -- ALLOCATION -- QUASI-JUDICIAL. (1) There is a board of milk control.

(2) The board consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the 2 years immediately preceding his appointment, and a member may not hold a public office, either elective or appointive, during his term on the board. Not more than three members may be of the same political party or residents of the same congressional district.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

HISTORY: En. 82A-406 by Sec. 1, Ch. 272. L. 1971; amd. Sec. 143, Ch. 431, L. 1975; R.C.M. 1947, 82A-406.

2-15-121. ALLOCATION FOR ADMINISTRATIVE PURPOSES ONLY. (1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provided staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration.

HISTORY: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973; R.C.M. 1947, 82A-108.

2-15-124. QUASI-JUDICIAL BOARDS. If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

(1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member shall be an attorney licensed to practice law in this state.

(2) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaries officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

HISTORY: *En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973; amd. Sec. 57, Ch. 439, L. 1975; amd. Sec. 1, Ch. 186, L. 1977; R.C.M. 1947, 82A-112(1), (2) (a), (3) thru (8).*